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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/822,477	04/12/2004	Bruce D. Alexander	5681-76200	3141
58467	7590	05/28/2008		
MHKKG/SUN			EXAMINER	
P.O. BOX 398			HU, JINSONG	
AUSTIN, TX 78767				
			ART UNIT	PAPER NUMBER
			2154	
			MAIL DATE	DELIVERY MODE
			05/28/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/822,477

**Applicant(s)**

ALEXANDER ET AL.

**Examiner**

JINSONG HU

**Art Unit**

2154

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 2/21/08.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

1. Claims 1-27 are presented for examination. Claims 19-27 have been amended.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-5, 8-14, 17-23 and 26-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peterson et al. (US 2002/0188576) in view of Yoshida et al. (US 7,246,172).

4. As per claims 1, 4-5 and 9, Peterson teaches the invention substantially as claimed including a system, comprising:

a computational resource [i.e., network service; pars 7 & 39];

a application configured to utilize said computational resource [par. 1];

a metering utility configured to measure utilization of said computational resource by a given one of said plurality of applications [pars. 8, 15 & 17]; and

a cost model configured to allocate a first portion of a cost of said computational resource to said given application dependent upon said measured utilization of said computational resource by said given application [table 1; pars. 13 & 18-20].

5. Peterson does not specifically teach a plurality applications utilizing computational resource, but the reference indicate the invention may be carried out in a wide variety of embodiments. In the same field, Yoshiba on the other hand teaches plurality applications utilizing computational resource [col. 5, lines 19-35]. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to include Yoshiba's a plurality applications in Peterson's system based on Peterson's suggestion because doing so would enable the system provide services to more customers.

6. As per claim 2, Peterson teaches the cost model is further configured to allocate a second portion of said cost of said computational resource to said given application as a fixed cost not dependent upon said measured utilization of said computational resource by said given application [incremental charge, table 1, pars. 18 & 36].

7. As per claim 3, Peterson teaches said first and second portions total one hundred percent of said cost, and wherein subject to said totaling, said first and said second portions each comprise from zero percent to one hundred percent of said cost [pars. 13, 18-20 & 35].

Art Unit: 2154

8. As per claim 8, Peterson teaches the first portion of said cost is dependent upon a quality of service of said given application [pars. 19-20 & 28].

9. As per claims 10-14, 17-23 and 26-27, since they are method and device claims of claims 1-5 and 8-9, they are rejected for the same basis as claims 1-5 and 8-9 above.

10. Claims 6-7, 15-16 and 24-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peterson et al. (US 2002/0188576) in view of Yoshiba et al. (US 7,246,172), further in view of Agarwal et al. (US 2005/0125314).

11. As per claims 6-7, Peterson and Yoshiba teach the invention substantially as claimed in claim 1. Both references do not specifically teach the step of determining a respective total available capacity of each of said computational resources and compute a respective unit cost for each of said computational resources from said respective total available capacity and said respective cost share. However, Agarwal on the other hand teaches the step of determining a respective total available capacity of each of said computational resources and compute a respective unit cost for each of said computational resources from said respective total available capacity and said respective cost share [pars. 66-72]. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to include Agarwal's determining step

Art Unit: 2154

in Peterson/Yoshiba's system because doing so would avoid overflow in some resources by testing and balancing the traffic loading between all resources.

12. As per claims 15-16 and 24-25, since they are method and device claims of claims 6-7, they are rejected for the same basis as claims 6-7 above.

### ***Conclusion***

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jinsong Hu whose telephone number is (571) 272-3965. The examiner can normally be reached on 8:00 AM - 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Flynn can be reached on (571) 272-1915. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*/Jinsong Hu/*

*Primary Examiner, Art Unit 2154*

